

§ 230.161 Amendments to rules and regulations governing exemptions.

The rules and regulations governing the exemption of securities under section 3(b) of the Act, as in effect at the time the securities are first bona fide offered to the public in conformity therewith, shall continue to govern the exemption of such securities notwithstanding the subsequent amendment of such rules and regulations. This section shall not apply, however, to any new offering of such securities by an issuer or underwriter after the effective date of any such amendment, nor shall it apply to any offering after January 1, 1959, of securities by an issuer or underwriter pursuant to Regulation D or pursuant to Regulation A as in effect at any time prior to July 23, 1956.

[23 FR 4454, June 20, 1958]

§ 230.162 Submission of tenders in registered exchange offers.

(a) Notwithstanding section 5(a) of the Act (15 U.S.C. 77e(a)), offerors may solicit tenders of securities in an exchange offer subject to §240.13e-4(e) or §240.14d-4(b) of this chapter before a registration statement is effective as to the security offered, so long as no securities are purchased until the registration statement is effective and the tender offer has expired in accordance with the tender offer rules.

(b) Notwithstanding section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)), a prospectus that meets the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) need not be delivered to security holders in an exchange offer subject to §240.13e-4(e) or §240.14d-4(b) of this chapter, so long as a preliminary prospectus, prospectus supplements and revised prospectuses are delivered to security holders in accordance with §240.13e-4(e)(2) or §240.14d-4(b) of this chapter, as applicable.

[64 FR 61450, Nov. 10, 1999]

§ 230.165 Offers made in connection with a business combination transaction.

PRELIMINARY NOTE: This section is available only to communications relating to business combinations. The exemption does not apply to communications that may be in technical compliance with this section, but have the primary purpose or effect of condi-

tioning the market for another transaction, such as a capital-raising or resale transaction.

(a) *Communications before a registration statement is filed.* Notwithstanding section 5(c) of the Act (15 U.S.C. 77e(c)), the offeror of securities in a business combination transaction to be registered under the Act may make an offer to sell or solicit an offer to buy those securities from and including the first public announcement until the filing of a registration statement related to the transaction, so long as any written communication (other than non-public communications among participants) made in connection with or relating to the transaction (*i.e.*, prospectus) is filed in accordance with §230.425 and the conditions in paragraph (c) of this section are satisfied.

(b) *Communications after a registration statement is filed.* Notwithstanding section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)), any written communication (other than non-public communications among participants) made in connection with or relating to a business combination transaction (*i.e.*, prospectus) after the filing of a registration statement related to the transaction need not satisfy the requirements of section 10 (15 U.S.C. 77j) of the Act, so long as the prospectus is filed in accordance with §230.424 or §230.425 and the conditions in paragraph (c) of this section are satisfied.

(c) *Conditions.* To rely on paragraphs (a) and (b) of this section:

(1) Each prospectus must contain a prominent legend that urges investors to read the relevant documents filed or to be filed with the Commission because they contain important information. The legend also must explain to investors that they can get the documents for free at the Commission's web site and describe which documents are available free from the offeror; and

(2) In an exchange offer, the offer must be made in accordance with the applicable tender offer rules (§§240.14d-1 through 240.14e-8 of this chapter); and, in a transaction involving the vote of security holders, the offer must be made in accordance with the applicable proxy or information statement rules (§§240.14a-1 through 240.14a-101